

December 06 2018 12:18 PM

1 The Honorable Susan K. Serko
2 KEVIN STOCK
3 COUNTY CLERK
4 Trial Date: June ~~NO: 182909076-3~~
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

MICHEAL W. GARWICK and
MATTHEW A. GRANSTROM,
individually and on behalf of all those
similarly situated,

Plaintiffs,

v.

VETERANS INDEPENDENT
ENTERPRISES OF WASHINGTON, a
Washington public benefit corporation,
DONALD HUTT, an individual, and GARY
PETERSON, an individual,

Defendants.

No. 18-2-09076-3

PLAINTIFF'S MEMORANDUM IN
SUPPORT OF MOTION TO APPOINT
GENERAL RECEIVER

I. RELIEF REQUESTED

The appointment of a receiver is authorized under RCW 7.60.025(1)(i) because Veterans Independent Enterprises of Washington is not an individual and it is insolvent or is not paying its debts as they become due. A receiver is necessary to secure justice for the Plaintiffs and members of the putative class because VIEW continues to operate in violation of its bylaws and operations are in disarray. Management appears to be taking action that

1 will cause remaining valuable real estate equity to be encumbered or lost depriving Plaintiffs
2 and members of the putative class justice when they prevail on the merits of their case.
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4 **II. STATEMENT OF FACTS**

5 1. VIEW is not paying its debts as they become due and is either currently
6 insolvent or in imminent danger of being insolvent. Creditors with past due balances include
7 but are not limited to the following:

- 8 a. Department of Social and Health Services (“DSHS”) – money deducted
9 from employee’s paychecks for child support but not remitted to state
10 agency. *See Granstrom Decl. 2, Wallace Decl. 2*
- 11 b. Fife Business Investors LLC – Former Landlord, Unlawful Detainer
12 Judgment, Pierce County Superior Court Case #18-2-10694-5
- 13 c. ADP – Bounced payroll
- 14 d. South Sound Bank (Timberland Bank)
- 15 e. Heiser Body Co. Inc.
- 16 f. Smart Talent Temp Agency
- 17 g. AMS Technology
- 18 h. Comcast – Utilities supposed to be paid for its disabled veteran’s housing
19 tenants not paid and service shut off. Residents forced to open personal
20 accounts and pay directly.
- 21 i. Puget Sound Energy – Utilities supposed to be paid for its disabled
22 veteran’s housing tenants not paid and service shut off. Residents forced
23 to open personal accounts and pay directly.

j. Warrant for Unpaid L&I Premiums – Pierce County Superior Court Case numbers 18-9-93954-3, 18-9-93343-0, 18-9-93803-2.

k. Tacoma Public Utilities – Power Shut Off at Residences and Block Placed on accounts preventing tenants from paying

2. VIEW has failed to pay its employees in a timely manner and has admitted this fact in responses to Plaintiffs' interrogatories and in emails to Department of Commerce.

Pizl Decl. 10 Exhibit A and Taylor Decl. 5, Exhibit D.

3. VIEW may not be operating within its bylaws. *Taylor Decl. 4, Exhibit C*

4. VIEW's management refuses to have its financials audited in violation with its bylaws, its agreement with South Sound Bank, and pursuant to requests from the Department of Commerce. *Taylor Decl. 5, Exhibit D*

5. VIEW's "Chief Operations Officer", Rosemary Hibbler ("Hibbler") has multiple felony convictions for crimes of dishonesty and has an outstanding judgment against her relating to what can be characterized as Corporate Identity theft in an attempt to obtain control of real estate, rents and other valuable assets. *Pizl Decl.12 Exhibit A*

6. VIEW's "Chief Executive Officer", Gary Peterson acquiesces to Hibbler in all respects of the organization and effectively has no control. When presented with clear evidence that Hibbler forged checks, he ratified their issuance. *See Taylor Decl.3 Exhibit B.* When his own daughter, Karin Catey investigated and presented evidence and expressed grave concerns that Hibbler could be embezzling and misappropriating funds, he ignored the findings in favor of Hibbler. Specifically she investigated allegations of check fraud and forgery reported by Bank of America. *See Taylor Decl. 3 and Taylor Decl. Exhibit B.*

7. Hibbler has coerced or conspired with VIEW employees to misappropriate funds on her behalf. On March 9, a warrant for Hibbler's arrest was issued by the Honorable Janet M. Helson of the King County Superior Court. On October 8, Hibbler was arrested pursuant to this warrant and was booked into King County Jail. Hibbler subsequently, either by coercion or conspiracy caused Rosa Remedios to misappropriate \$500.00 of money received by the VIEW for rent to help pay Hibbler's bail. *Taylor Decl. 2* It is unclear if or when those misappropriated funds have been repaid to VIEW.

8. The Attorney General appears to have a criminal investigation ongoing against Hibbler. *Pizl Decl.* 15.

9. VIEW has significant equity in real estate that is in danger of loss, misappropriation or waste. Hibbler has recently contacted Department of Commerce requesting "payoffs" of VIEWs real property whereby use restrictions placed would be removed and Commerce is in the process of providing that information. It is unclear how VIEW will fund these payoffs. A reasonable inference given the totality of the circumstances can be drawn that perhaps a fraudulent transfer is in the works. See *Taylor*

III. STATEMENT OF ISSUE

Whether the Superior Court has the equitable power and discretion to appoint a receiver under RCW 7.60 and whether the appointment of a receiver in this case is necessary in order to secure ample justice to Plaintiffs and putative class members.

IV. EVIDENCE RELIED UPON

Plaintiffs rely on the pleadings and prior submissions in the case and on the accompanying Declarations and Exhibits Thereto of James B. Pizl, Tammy Taylor, Wallace Pruitt Jr., and Matthew Granstrom.

V. DISCUSSION

A. Superior Court has equitable power to appoint a receiver

The Superior Court clearly has equitable power to appoint a receiver in this case. RCW 7.60.025(1)(i) specifically states, “A receiver may be appointed by the superior court … in an action against any person who is not an individual … if that person is insolvent or is not generally paying the person’s debts as those debts become due unless they are subject to a bona fide dispute, or if that person is in imminent danger of insolvency.” VIEW is not an individual, but rather a Washington Public Benefit Corporation.

VIEW is insolvent or in imminent danger of insolvency. The test of insolvency of a corporation is its ability to meet its obligations in the ordinary course of business. *Guaranty Trust Co. v. Yakima First Nat. Bank*, 179 Wash. 615, 38 P.2d 384 (1934) and *Stang v. Puget Sound Nat. Bank of Tacoma*, 188 Wash. 503, 63 P.2d 373 (1936) cited by *Warren v. Porter Const. Co., Inc.*, 29 Wash.2d 785, 189 P.2d 255 (1946). Here, the list and the dollar amount of VIEW's unpaid and past due creditors continues to grow indicating an inability to meet its obligations.

Even if somehow it isn't technically insolvent, VIEW certainly is not paying its debts when they become due. It has failed to pay its rent for months culminating in an eviction and a judgment. It has failed to pay utilities on its rental properties causing renters to have to pay

1 the bills directly or open accounts in their own name to keep them on. It hasn't remitted child
2 support that it deducted from employee's checks and it continues to owe several other creditors.
3 Most relevant to this case, it continues to pay its employees sporadically and consistently late
4 accruing more and more exemplary damages pursuant to RCW 49.52.070.

5 Because VIEW is not an individual and either is insolvent, is in imminent danger of
6 insolvency, or is not paying its debts when they become due, the Superior Court clearly has
7 equitable power under RCW 7.60(1)(i) to appoint a receiver.

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9 **B. The appointment of a receiver is necessary in order to secure ample justice for**
10 **Plaintiffs and members of the putative class and others**

11 Although this case hasn't run its course yet, it is clear that VIEW owes Plaintiffs and
12 members of the putative class significant damages. At the very least exemplary damages for
13 all occasions which payrolls were late pursuant to RCW 49.52.070. Late payment of wages
14 constitutes willful withholding under RCW 49.52.070 and employee is therefore entitled to
15 double damages. *Backman v. Northwest Publishing Center*, 147 Wash.App. 791, 197 P.2d
16 1187 (2008). Failure to pay wages due to an employer's financial inability to pay is willful
17 withholding under RCW 49.52.070. *Shilling v. Radio Holdings, Inc.*, 136 Wash.2d 152, 961
18 P.2d 371 (1998). VIEW has admitted it paid employees late due to financial difficulty. *See*
19 *Pizl Decl. 10-11*. VIEW continues to pay its employees late more often than not. *See White*
20 *Decl. 2*. Consequently, the amounts owed to members of the putative class continue to
21 increase.

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23 The June 4, 2018 email from Hibbler to Corina Grigoras and others at Department of
24 Commerce at 3:08 pm is telling. While she was attempting to negotiate terms to allow her to
25 encumber VIEW's valuable real estate, Hibbler states, "I shared with the entire staff our
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1 inability to make payroll...It is not a secret that V.I.E.W. has not been in the best financial
2 position for years." *Taylor Decl. 3 and Taylor Decl. Exhibit B.* This is a tacit admission that
3 employees have been paid and will continue to be paid late under Hibbler's leadership.
4 Plaintiffs and members of the putative class don't actually need Hibbler's tacit admission to
5 prove employees were paid late since VIEW has already admitted it in its responses to
6 Interrogatories.
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8 Hibbler goes on in the same June 4, 2018 email to claim, "I pay my financial obligations
9 ..." Even if Hibbler's multiple convictions involving crimes of dishonesty (*Pizl Decl. 13 and*
10 *Pizl Decl. Exhibit F*) did not cause one to question her credibility, certainly that statement in
11 light of an outstanding, unpaid judgment in excess of \$236,000 (*Pizl Decl. 12 and Pizl Decl.*
12 *Exhibit E*) against her would certainly cause one pause. She also continues to personally stand
13 in the way of allowing a financial audit of VIEW to be performed even though it is required
14 by its bylaws, as requested by Department of Commerce and as was required by South Sound
15 Bank. See *Taylor Decl. 5 and Taylor Decl. Exhibit D.*
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17 In light of these facts, a reasonable inference can be made that Hibbler and potentially
18 other conspirators may have a hidden agenda as it relates to the remaining VIEW real estate.
19 Her insistence that Department of Commerce release its restriction requiring the properties to
20 be used to house low-income veterans speaks volumes that she has plans to liquidate the
21 properties. Either Hibbler and others at VIEW wish to remain in power continuing to
22 mismanage while continuing to get personally compensated until all VIEW's assets are
23 exhausted, or there is something more sinister in mind such as somehow fraudulently
24 transferring VIEW's real estate and other assets. In either scenario, justice requires that current
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1 management be removed and replaced with general receiver so that Plaintiffs and members of
2 the putative class' claims can be properly adjudicated. Short of that remedy, Plaintiffs and
3 members of the putative class are likely to be left with a judgment proof corporation by the
4 time its claims are fully litigated. A general receiver needs to be appointed in the interest of
5 justice.

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8 DATED this 6th day of December, 2018.

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ENTENTE LAW PLLC

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JAMES B. PIZL, WSBA #28969

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Attorney for Plaintiff

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